

THE STATE BAR OF CALIFORNIA

WHAT SHOULD I KNOW ABOUT ELDER ABUSE?

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LEGAL
FACTS
OF LIFE

What should I know about elder abuse?

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Introduction

A wheelchair-bound woman suffers in silence at the hands of an abusive caregiver. A lone widower falls victim to a predatory lending scam and loses his home. An ailing mother lies helpless in her bedroom while her son spends her life savings.

As many as one in seven senior citizens nationwide falls victim to some type of elder abuse — usually at the hands of a family member. The abuse can be financial, physical or psychological. And the consequences can be deadly. Statistics suggest that abused and exploited seniors die sooner than other seniors their age. But in spite of such devastating consequences, most elder abuse goes unreported.

If you have been abused, you may be afraid of what might happen if you tell someone. Or, maybe you suspect that an elderly neighbor or friend is being abused, but you do not know where to turn for assistance. Help is just a phone call away. No one has the right to hurt you — or your neighbor or friend — physically, emotionally or financially.

The aim of this pamphlet is to provide you with a basic overview of elder abuse: what it is, how the law addresses it, what can be done to help you avoid it and where you — the victim or victim's advocate — can find assistance.

1 *What is elder abuse?*

It is the neglect, exploitation or “painful or harmful” mistreatment of anyone who is 65 or older (or any disabled dependent adult aged 18 to 64). It can involve physical violence, psychological abuse, isolation, abandonment, abduction, false imprisonment or a caregiver's neglect. It could also involve the unlawful taking of a senior's money or property.

In short, elder abuse involves various crimes, such as theft, assault or identity theft, that strike victims of all ages. But when the victim is 65 years old or older (or a disabled dependent adult), the criminal faces stiffer penalties.

2 *What should I do if I am being abused or if I suspect someone else is being abused?*

If the abuse, neglect or exploitation is taking place in a private home, call the Adult Protective Services (APS). Check your county phone listings for a local APS office. Or, for a referral, you could call 1-800-510-2020. (In addition, many counties have specialized teams that deal with financial elder abuse; ask the APS worker if such a team exists in your area.)

If the abuse is occurring in a licensed long-term care facility, such as a nursing home, call the local long-term care ombudsman. (To locate an ombudsman, call 1-800-231-4024.) Your report will be confidential, and you can remain anonymous.

Or, to report elder abuse of any kind, you can simply call the California Attorney General's Elder and Dependent Adult Abuse Reporting Hotline at 1-888-436-3600.

For further information and guidance, request a free publication entitled *A Citizen's Guide to Preventing & Reporting Elder Abuse* by writing to: Crime and Violence Prevention Center, 1300 I Street, Suite 1150, Sacramento, CA 95814. Or fax your request to 916-327-2384. The guide, produced by the California Attorney General's Office, is also available at www.ag.ca.gov (click on *Publications* and *Elder Abuse*).

3 *What are some examples of elder abuse?*

- Your caregiver or a “new friend” persuades you to sign a power of attorney so she can handle your affairs for you — only to sell your home and steal the cash.
- Neglected and hungry, you lie stranded in your bedroom while your live-in son empties your bank accounts.
- A home repairman persuades you to pay cash on the spot for a “great” home improvement deal — then never does any work.

- You forget to take your medication and a nursing home staff member slaps you in the face.
- You pay “fees” to claim a “free vacation” or winnings from an international lottery — only to deplete your savings and get nothing in return.

4 *Am I required to report suspected elder abuse?*

Yes, if you are responsible, with or without pay, for taking care of an elder or dependent adult. Others, too, must report suspected elder abuse: administrators, supervisors and licensed staff of facilities providing care and services to the elderly; APS employees; health practitioners (such as physicians); police officers; clergy members; and elder or dependent adult care custodians. Care custodians include, for example, home health agency administrators and staff, and fire department members. If a mandated reporter fails to report known or suspected abuse, he or she could face criminal charges.

And beginning Jan. 1, 2007, employees of financial institutions will be required to report known or suspected financial abuse of elders as well — or they could face civil penalties.

5 *Is there anyone who will check on my elderly father’s well-being for me?*

Yes. If you are worried about a parent or other elderly person who lives in a different community, contact the police or sheriff’s department in his or her area and request a *well-being* or *welfare* check.

6 *Is domestic violence the same as elder abuse?*

No. And different laws apply to each as well. Unlike elder abuse, the law defines *domestic violence* as certain kinds of abuse directed toward a spouse or former spouse, domestic partner or former domestic partner, cohabitant, or person *of any age* with whom the abuser has had a “dating or engagement relationship,” has had a child, or is related by blood or marriage. Such violence is

behavior driven by the need to control. It can range from threats to unwanted sexual touching and hitting. It cuts across all cultures, ethnic backgrounds, education levels and income brackets. If the victim of domestic violence is 65 or older, the matter may be treated as a case of elder abuse.

7 *What can I do to protect myself from an abusive caregiver or spouse?*

If you are in immediate danger, call 911. When the police arrive, explain what happened. In both elder abuse and domestic violence cases, the officers can contact an on-call judicial officer and issue an immediate *Emergency Protective Order* (EPO). This legally prohibits the abuser from coming near you or contacting you. The EPO will remain in effect for five court days or seven calendar days. Then, to extend the order, you can seek a *Temporary Restraining Order* (TRO). Just fill out the forms at your local courthouse. The TRO will go into effect as soon as it has been signed by a judge and delivered to the abuser. And it can be made “permanent,” which means that it will be good for up to three years and can be renewed.

In addition, in cases of elder abuse, the senior citizen need not have suffered physical abuse to obtain a restraining order. An elder abuse restraining order can prohibit the mental or financial abuse of a senior as well.

Keep in mind, however, that restraining orders do not *eliminate* the risk of future violence or other types of abuse. A restraining order may help protect you, but you should remain on guard.

As an added protection, state law allows domestic violence victims to keep their addresses confidential through the state’s Safe at Home program. This means that your home address need not appear on court papers or other official documents. For information, call 1-877-322-5227 (or visit the program’s Web site at www.ss.ca.gov/safeathome).

To locate a local shelter or counseling, call the National Domestic Violence 24-hour hotline at 1-800-799-7233 (for TTY, call 1-800-787-3224). Another resource is the State Bar’s free pamphlet *Can the Law Help Protect Me from Domestic Violence?* (See #16 for information on ordering it.)

8 *How can I be sure that my mother's caregiver will provide proper and adequate in-home care?*

You cannot be sure, especially if the caregiver is simply providing personal assistance with such daily rituals as dressing or preparing meals. You can hire this type of caregiver through a *home care agency* or *home care referral company*. Or you could hire someone on your own and pay the payroll taxes and worker's compensation insurance. But in either case, be extremely cautious, seek referrals and ask a lot of questions. Such caregivers are not regulated by anyone.

Caregivers who provide medical care, however, must be licensed or certified. You can hire such caregivers through a *licensed home health care agency*. Home health care agencies, certified nurse assistants, registered nurses, nurse practitioners and vocational nurses must be licensed or certified by the state.

9 *As a senior, am I more likely to be targeted in a consumer scam?*

Yes. Americans lose billions of dollars each year in telemarketing fraud and mail scams alone, for example. And seniors are often the victims. You could be approached through the mail, by telephone, via e-mail or at your front door. Know your rights and how you might be vulnerable. As the old adage goes: If it seems too good to be true, it probably is. A few common scams include:

- **Charitable Donation Cons:** Watch out for fake charities. Anyone soliciting funds for charitable purposes must register with the state Attorney General's Office. To find out if a charity is registered, call 916-445-2021 or visit the Web site at www.ag.ca.gov/charities. You could also check with the Better Business Bureau (www.bbb.org).

- **Credit Card Insurance and Credit Repair Scams:** Be wary of salespeople who want to sell you unnecessary insurance to pay for any unauthorized charges made to your credit cards. Other fraudulent

salespeople offer illegal “credit repair” schemes. Such schemes cannot clear up negative credit or provide a new credit report.

- ***Door-to-Door or In-Person Solicitation:***

Ask to see a business permit. Most cities require one. Resist pressure to buy anything on the spot. If you do make a purchase, remember that you usually have three business days to legally cancel such a contract if it was made in your home or in a temporary business place (such as a hotel room or convention center). Contact your local Better Business Bureau to check out the business. To report a fraud, call your local police or district attorney’s office.

- ***Financial Advisors and Investment Scams:***

Beware of investment seminars touting get-rich-quick schemes. Ask the salesperson for his or her credentials, and investigate before you invest. Call the state Department of Corporations’ toll free at 1-866-ASK-CORP (275-2677) to find out more about the company. And for additional tips on protecting yourself, check out the Department of Corporations’ program “Seniors Against Investment Fraud” (SAIF). Or visit the program’s Web site at www.corp.ca.gov.

- ***Funeral and Cemetery Fraud:*** Watch out for high-priced sales pitches. *The Consumer Guide to Funeral and Cemetery Purchases* — available at no cost from the Department of Consumer Affairs’ Cemetery and Funeral Bureau (www.cfb.ca.gov) — details your requirements, pre-needs arrangements and what to look for in a contract. You can also call the Cemetery and Funeral Bureau at 916-574-7870 to verify a funeral establishment’s license or file a complaint. And check with your local Better Business Bureau as well.

- ***Home Repair:*** It sounds like a good deal. You pay cash for a roof repair, but then the repairman does a shoddy job — or nothing at all. Before hiring any contractor, get more than one estimate, check references and put everything in writing. Be aware that your home cannot be used

as collateral in any home improvement contract if you are 65 or older. And never pay more than the legal maximum (usually 10 percent of the repair price or \$1,000, whichever is less) before the work is done. To check the contractor's license, go to the Contractors State License Board's Web site at www.cslb.ca.gov or call 1-800-321-2752. And, for additional tips, request a copy of the board's publication *What You Should Know Before You Hire a Contractor* (also available online).

- **Medicare Fraud:** Never give your Medicare/Medi-Cal number to a stranger. And always check your Medicare statement to verify that you actually received the services or medical equipment charged to Medicare/Medi-Cal. If you suspect Medicare provider fraud, call Medicare at 1-800-633-4227. To report suspected Medi-Cal provider fraud, call the Bureau of Medi-Cal Fraud and Elder Abuse in the state Attorney General's Office at 1-800-722-0432.

- **Living Trust Mills:** Beware of "trust mill" marketing schemes in which salespeople pose as experts in estate planning to gain your trust and confidence. These unqualified "experts" may be salespersons seeking your personal financial information with the ulterior motive of selling you both a living trust and an annuity, which may not be appropriate for you. (Such insurance-based products can have hidden costs and may tie up a senior's funds for a decade or even longer.) Such tactics also may violate insurance laws and laws prohibiting the unauthorized practice of law. To report a suspected scam, call your district attorney's office and the state Department of Insurance's consumer hotline at 1-800-927-4357.

- **Telemarketing/Mail/Internet Fraud:** It can be difficult to distinguish legitimate telemarketers and e-mail solicitations from those that are not. Never provide personal information or send money to solicitors who contact you first. Instead, insist on calling the solicitor back after you have had time to check out the solicitation. Also, steer clear of any caller or mailer announcing that you have won a sweepstakes or foreign lottery

and simply need to pay a “fee” or “tax” to collect your winnings. (The cross-border sale or purchase of lottery tickets is illegal — and so is any advance charge for collecting the prize.) For more information or to file a complaint, call the state Attorney General’s Office at 1-800-952-5225 and the National Fraud Information Center at 1-800-876-7060. Or, to file a complaint alleging Internet fraud, visit the online Internet Crime Complaint Center at www.ic3.gov.

- ***Real Estate Predatory Lending Scams:***

Senior homeowners are the primary targets in many of these scams. Seniors may be lured into home equity loans that they cannot possibly repay. The interest rate and fees may be much higher than those of a standard loan — and may even be illegal. Or, the loan may require a large “balloon” payment at some point. In addition, the lender may offer misleading information (seeking to take advantage of a senior who may be facing a cash crunch). Obtaining a home equity loan may have advantages for you. Before you sign anything, however, check out the lender and make sure you fully understand the loan’s terms. Also, keep in mind that, even if the loan is illegal, you could wind up losing your home if you default on the loan and fail to take action.

10 *Should I be cautious in how I select financial or estate planning services?*

Yes. Some self-proclaimed “trust specialists” and financial planning “experts” have no advanced training or qualifications in estate planning. And these so-called experts may have ulterior motives. For example, they might be seeking to gain access to your personal financial information to sell you insurance-based products, such as annuities, which may not be appropriate for you (see *Living Trust Mills* on page 7). Before considering a living trust or any other estate or financial planning document or service:

- Consult with a lawyer or other financial advisor who is knowledgeable in estate planning. Check

out the advisor's credentials and qualifications. Also, keep in mind that legal document assistants cannot give legal advice and paralegals must work under the direct supervision of a lawyer.

- Ask for time to consider and reflect on your decision. Do not allow yourself to be pressured into purchasing an estate or financial planning product.
- Know your cancellation rights. If you buy an annuity, for example, you have 30 days to cancel it.
- Be wary of home solicitors who ask you for confidential and detailed information about your assets and finances.
- Find out if any complaints have been filed against the company by calling local and state consumer protection offices or the Better Business Bureau.

11 *How can I avoid being solicited by telemarketers?*

You can register your telephone numbers with the National Do-Not-Call Registry, which is managed by the Federal Trade Commission (FTC). To register a phone number, simply call 1-888-382-1222 or go to the Web site (www.donotcall.gov).

You can also “opt out” of the credit agencies’ pre-approved credit offer mailing lists. Simply call 1-888-5-OPTOUT (1-888-567-8688) or opt out online at www.optoutprescreen.com.

12 *What can I do if someone steals my credit card and runs up the bill?*

Notify the credit card company immediately. If someone runs up your credit card or uses your debit card without authorization, you usually are only liable for up to \$50 if you contact the company promptly. It is also important to file a police report to document the loss and your response. And you should contact the following credit-reporting bureaus to report the missing credit card, place a fraud alert on your account and

request copies of your credit report:

- ***Experian:***

1-888-397-3742 (alerts/reports)

- ***Trans Union:***

1-800-680-7289 (alerts)

1-800-916-8800 (reports)

- ***Equifax:***

1-800-525-6285 (alerts)

1-800-685-1111 (reports)

13 *Why should I keep my Social Security number confidential?*

With your Social Security number and certain other personal information, a thief can open credit cards in your name, take out loans and gain access to your money. And you could wind up with ruined credit, financial losses and even, in some cases, a criminal record for crimes that you did not commit. So you should safeguard your personal information, particularly your Social Security number, whenever possible.

Maintaining confidentiality can be difficult, however, because so many agencies and financial institutions use Social Security numbers to verify personal identity. In recent years, changes in the law have added new protections. For example, neither individuals nor business organizations (with the exception of some government agencies) can publicly display your Social Security number. Nor can your number be printed on any card required to access products or services. In addition, your health care provider can no longer print your number on your identification card. And you cannot be required to transmit your number over the Internet unless the connection is “secure” or “encrypted.”

As an added precaution, avoid carrying your Social Security card in your wallet or purse and never give out your Social Security number unless the requesting company or agency can, by law, require it. For more information, call the Department of Consumer Affairs’ Office of Privacy Protection at 1-866-785-9663 or visit the office’s Web site at **www.privacy.ca.gov**.

14 *What is identity theft and what should I do if I become a victim?*

Identity theft is the unauthorized use of someone's personal data to obtain credit cards, loans, automobiles, products and services. "Personal data" includes your driver's license, credit card numbers, name, address, telephone number or Social Security number. Surveys suggest that more than 9 million Americans fall victim to identity theft each year at a cost of more than \$51 billion to businesses, financial institutions and consumers.

To keep tabs on your credit, you can request one free credit report annually from each of the three major credit bureaus (the bureaus listed under #12). To order your free annual reports, call 1-877-322-8228 or visit the program's Web site at: **www.annualcreditreport.com**

If you fall victim to an identity thief, you will need to take certain steps to alert the authorities, stop the crime, protect your credit rating and ensure that the thief's actions do not damage your financial status in the future. For example, you should call the major credit-reporting agencies and put a fraud alert on your account, file a police report, register a complaint with the FTC, and send out an ID Theft Affidavit to any business in which a fraudulent account was opened.

For more detailed information, visit the Web sites run by the FTC (**www.ftc.gov**), the Privacy Rights Clearinghouse (**www.privacyrights.org**), California's Office of Privacy Protection (**www.privacy.ca.gov**), the Identity Theft Resource Center (**www.idtheftcenter.org**) and the California Attorney General's Office (**www.ag.ca.gov/idtheft**).

15 *Where can I find out more about elder abuse?*

- *California Attorney General's Crime and Violence Prevention Center:* **www.safestate.org**

- *California Department of Corporations' Seniors Against Investment Fraud (SAIF):* **www.corp.ca.gov**

- *National Center on Elder Abuse:*
www.elderabusecenter.org

- *National Committee for the Prevention of Elder Abuse:* **www.preventelderabuse.org**

16 *How do I find an attorney to represent me?*

Under the federal *Older Americans Act*, every county has free legal services for seniors who are 60 years old or older. The programs differ, however, and their criteria for accepting cases vary as well.

Also, if you are at least 60, you may be able to get free legal advice by calling the Senior Legal Hotline at 1-800-222-1753 (in the Sacramento area, call 916-551-2140) or by visiting the hotline's Web site at **www.seniorlegall hotline.org**.

If neither the county's legal services program nor the hotline can assist you, ask a friend, co-worker or business associate to recommend a lawyer. Or call a State Bar-certified lawyer referral service. For an online list of certified referral services, visit the State Bar's Web site at **www.calbar.ca.gov/lrs**. For a recorded message with the phone numbers of certified services in your county, call 1-866-44-ca-law (1-866-442-2529). If you are out of state, you can call 415-538-2250 to hear the same recorded message. Or check the Yellow pages of your telephone directory for a listing under the heading "Attorney Referral Service."

State Bar-certified lawyer referral services, which must meet minimum standards established by the California Supreme Court, can assist you in finding the right lawyer for your particular problem. Most of these services offer half-hour consultations for a modest fee.

Attorneys who are members of certified lawyer referral services must carry insurance, agree to fee arbitration for fee disputes, meet standards of experience and be State Bar members in good standing.

Lawyer referral service fees do vary. Don't forget to ask whether there is a fee for the referral or consultation. And if you decide to hire a lawyer, make sure you understand what you will be paying for, how much it will cost and when you

will be expected to pay your bill. You may want to talk to several attorneys before you hire one.

Also, if you receive Supplemental Security Income (SSI) or certain other government benefits, you could qualify to have your court fees and costs waived — even if you are represented by a private attorney.

For more information on finding an attorney, see the State Bar pamphlet *How Can I Find and Hire the Right Lawyer?* To order a free copy of this pamphlet or for a list of other available consumer pamphlets, send an e-mail to pamphlets@calbar.ca.gov. For information on ordering the bar's consumer publications by mail, call 1-888-875-LAWS (5297).

The State Bar also produces *Seniors and the Law* — a guide that touches on a variety of senior issues, including elder abuse. To order this guide free of charge, simply e-mail your request to seniors@calbar.ca.gov. Or visit the State Bar's Web site — www.calbar.ca.gov — where you'll find the bar's various consumer pamphlets and guides, as well as information on ordering them.

The purpose of this pamphlet is to provide general information on the law, which is subject to change. If you have a specific legal problem, you may want to consult a lawyer.

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